

**BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD
OF THE STATE OF CALIFORNIA**

AB-8646

File: 20-428651 Reg: 06063161

DONNA JOSEPH, Appellant/Protestant

v.

DAVID SILVA dba La Fiesta Meat Market #2
15020 Prairie Avenue, Hawthorne, CA 90250,
Respondent/Applicant

and

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: John W. Lewis

Appeals Board Hearing: December 6, 2007
Los Angeles, CA

ISSUED FEBRUARY 29, 2008

Donna Joseph (appellant/protestant) appeals from a decision of the Department of Alcoholic Beverage Control¹ which granted the application of David Silva doing business as La Fiesta Meat Market #2 (respondent/applicant) for an off-sale beer and wine license.

Appearances on appeal include appellant/protestant Donna Joseph, appearing through her counsel, Rick A. Blake; respondent/applicant David Silva, representing himself; and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

¹The decision of the Department, dated October 19, 2006, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Applicant petitioned for issuance of a conditional off-sale beer and wine license on April 13, 2006. The Department investigator recommended that the license be issued, but protests were filed by protestant and others.

An administrative hearing was held on September 1, 2006, at which time oral and documentary evidence was received. At that hearing, testimony was presented by David Silva, the applicant, who testified in support of the issuance of the license, and by Donna Joseph, who opposed the issuance of the license because her son would have to pass the market in question on his way to and from school, and because of the potential for loitering in the area of the market.

Subsequent to the hearing, the Department issued its decision which allowed the license to issue, subject to conditions on the license limiting the ratio of alcoholic beverage sales to total sales, hours of operation, requiring the removal of graffiti within a specified time, prohibiting amusement machines or video games on the premises, prohibiting the sale of single containers, prohibiting loitering on or around the premises, and prohibiting the sale of adult magazines and videos.

Appellant filed a timely notice of appeal.

DISCUSSION

Written notice of the opportunity to file briefs in support of the appellant's position was given on September 11, 2007. No brief has been filed by appellant. We have reviewed the notice of appeal and have found insufficient assistance in that document which would aid in review.

The Appeals Board is not required to make an independent search of the record for error not pointed out by appellant. It was the duty of appellant to show to the

Appeals Board that the claimed error existed. Without such assistance by appellant, the Appeals Board may deem the general contentions waived or abandoned. (*Horowitz v. Noble* (1978) 79 Cal.App.3d 120, 139 [144 Cal.Rptr. 710] and *Sutter v. Gamel* (1962) 210 Cal.App.2d 529, 531 [26 Cal.Rptr. 880, 881].)

The Department has determined that the license should be granted, and we see no reason why it should not.

Order

The decision of the Department is affirmed.²

FRED ARMENDARIZ, CHAIRMAN
SOPHIE C. WONG, MEMBER
TINA FRANK, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOAR

² This final decision is filed in accordance with Business and Professions Code §23088 and shall become effective 30 days following the date of the filing of this final decision as provided by §23090.7 of said code.

Any party may, before this final decision becomes effective, apply to the appropriate district court of appeal, or the California Supreme Court, for a writ of review of this final decision in accordance with Business and Professions Code §23090 et seq.